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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/063,413	04/21/2002	Sharon Flank	EMTN.P-001-5	9903
21121	7590	06/29/2004	EXAMINER	
OPPEDAHL AND LARSON LLP			COBY, FRANTZ	
P O BOX 5068			ART UNIT	
DILLON, CO 80435-5068			PAPER NUMBER	

2171

DATE MAILED: 06/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/063,413

Applicant(s)

FLANK ET AL.

Examiner

Frantz Coby

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 21 April 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>2</u> . | 6) <input type="checkbox"/> Other: _____  |

This is in response to application filed on April 21, 2002 in which claims 1-25 are presented for examination.

**Status of Claims**

Claims 1-25 are pending.

***Information Disclosure Statement***

The information disclosure statement filed May 06, 2002 is in compliance with the provisions of 37 CFR 1.97, 1.98 and MPEP § 609. It has been placed in the application file and the information referred to therein has been considered as to the merits.

***Specification***

The abstract of the disclosure is objected to because it contains language that implies "the invention concerns". Correction is required. See MPEP § 608.01(b).

Applicant is reminded of the proper content of an abstract of the disclosure.

A patent abstract is a concise statement of the technical disclosure of the patent and should include that which is new in the art to which the invention pertains. If the patent is of a basic nature, the entire technical disclosure may be new in the art, and the abstract should be directed to the entire disclosure. If the patent is in the nature of an improvement in an old apparatus, process, product, or composition, the abstract should include the technical disclosure of the improvement. In certain patents, particularly those for compounds and compositions, wherein the process for making and/or the use thereof are not obvious, the abstract should set forth a process for making and/or use thereof. If the new technical disclosure involves modifications or alternatives, the abstract should mention by way of example the preferred modification or alternative.

The abstract should not refer to purported merits or speculative applications of the invention and should not compare the invention with the prior art.

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Where applicable, the abstract should include the following:

- (1) if a machine or apparatus, its organization and operation;
- (2) if an article, its method of making;
- (3) if a chemical compound, its identity and use;
- (4) if a mixture, its ingredients;
- (5) if a process, the steps.

Extensive mechanical and design details of apparatus should not be given.

Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-6 and 7-11, 13, 17, 21 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Desai et al. U.S. Patent no. 6,072,904 in view of Schultz U.S. Patent no. 5,721,902 and further in view of Hoffert et al. U.S. Patent 5,903,892.

As per claim 1, Desai et al. disclose "a method for use with a system storing digital media records and comprising a search engine" by providing a graphical based image retrieval system (See Desai et al. Abstract, Col. 2, lines 22-38; Col. 4, lines 34-60; Col. 5, lines 56-63).

It is noted, however, Desai et al. did not specifically detail the aspect of "expanding the search requests" as recited in the instant claims 1, 4, 7 and 10. On the other hand, Schultz achieved the aforementioned limitations by providing an expansion of query terms using part of speech tagging (See Schultz Title; Abstract).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify image retrieval system of Desai et al. by incorporating, in the search mechanism of Desai et al. the query expansion method of Schultz. The motivation being to provide a searching/retrieval system which can query a library or database and identify not only text documents, but also multi-media files stores on the library of database that are relevant to the query (See Schultz Col. 2, lines 57-61).

It is also noted that neither Desai et al. nor Schultz specifically detail the aspect of connecting to the Internet. Hoffert, however, provides a network environment that provides a hypertext transfer protocol server interface including an apparatus for searching for multimedia files (See Hoffert et al. Abstract; Figures 2a-2C; Col. 3, lines 19-29).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify image retrieval system of Desai et al. by incorporating, in the search mechanism of Desai et al. the query expansion method of Schultz and further

incorporated the hypertext teachings of Hoffert et al. because that would have permitted the searching method of Hoffert et al. to search for search for media files that are stored in the Internet.

As per claim 2, most of the limitations of this claim have been noted in the rejection of claim 1. In addition, both Schultz and Desai et al. disclose "a system for storing digital media records" (See Schultz Abstract; See Desai et al. Abstract); displaying part of a digital media record" is taught by Schultz (Col. 3, line 59-Col. 4, line 31). The aspect of receiving information of a selection; and receiving information indicative of text is taught by both Desai et al. (See Desai et al. Col. 2, lines 10-47) and Shultz Col. 4, lines 9-16). Also, the aspects of performing a search and displaying search results are taught by Shultz (See Abstract), Hoffert et al. (See Abstract) and Desai et al. (See Abstract).

As per claim 3, most of the limitations of this claim have been noted in the rejection of claim 2. In addition, Schultz discloses a touch screen (See Schultz Figure 1, component 104).

As per claims 4-6, most of the limitations of these claims have been noted in the rejection of claim 2. In addition, Desai et al. disclose user drawing on a pad to identify the portion of an image (See Desai et al. Figure 3; Col. 5, lines 36-55) user typing at a

keyboard; receiving voice information and performing speech recognition upon the voice information (See Figure 1, component 121).

As per claims 7-11, 13, 17, 21 and 25, most of the limitations of these claims have been noted in the rejection of claims 1-2. In addition, Desai et al. disclose ranking digital media record (See Desai et al. Col.2, lines 32-47).

Claims 12, 14-16, 18-20, and 22-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Desai et al. U.S. Patent no. 6,072,904 in view of Schultz U.S. Patent no. 5,721,902 and further in view of Hoffert et al. U.S. Patent 5,903,892 and Wiser et al. U.S. Patent no. 6,385,596.

As per claims 12, 14-16, 18-20, and 22-24, most of the limitations of these claims have been noted in the rejection of claims 7-11, 13, 17, 21 and 25 above.

It is noted, however, neither Desai et al. nor Schultz nor Hoffert et al. disclose a mechanism for allowing a user to purchase a digital media records. On the other hand, Wiser achieved the aforementioned claimed features by providing a secure online music distribution system including a media licensing mechanism as well as a payment mechanism to allow online purchasing of digital media (See Wiser et al. Figures 6A-6B).

It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the combination of Desai et al. and Schultz by further incorporating the online music distribution teachings of Wiser et al. because that would

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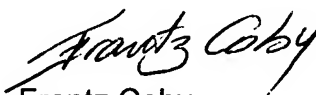
have enhanced the versatility of Desai's et al. image retrieval method by allowing it to be applied in an electronic commerce environment.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Frantz Coby whose telephone number is 703 305-4006. The examiner can normally be reached on Maxi-Flex (Monday-Saturday).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Safet Metjahic can be reached on 703 308-1436. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Frantz Coby  
Primary Examiner  
Art Unit 2171

June 23, 2004